

CIRCUIT CLERKS: Section 13408, R. S. Mo. 1939, does not
SALARIES: extend the compensation in term commencing
January 1, 1939, that ended December 31,
1938.

- - - - - February 3, 1942 - - - - -

Hon. Alvin B. Walker
Prosecuting Attorney
Sullivan County
Milan, Missouri

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Dear Sir:

Under date of February 2, 1942, you wrote this office
requesting an opinion, as follows:

"I desire to have an opinion from your
office as to whether or no the last
census would affect the salary of the
Circuit Clerk of Sullivan County,
Missouri, Sections 13408 and 13430 R.
S. 1939.

"The population of Sullivan County as
shown by the 1930 census is 15212 and
the 1940 census shows a population of
13701, which you will note drops the
salary in Sullivan County into the
10,000 to less than 15,000 class, if
the last census applies.

"The present Circuit Clerk and Recorder
was elected at the general election in
1938 and he took office on the 1st day
of January 1939, for his second term.

"The Circuit Clerk is contending that
the last census does not apply to him
by reason of the language of Section
13408 R. S. 1939, by reason of the
wording of the last paragraph."

Section 13408, R. S. Mo. 1939, is as follows:

"The clerks of the circuit courts of this state shall receive for their services annually the following sum: In counties having a population of less than seven thousand five hundred persons, the sum of twelve hundred (\$1200) dollars; in counties having a population of seven thousand five hundred persons and less than ten thousand persons, the sum of fifteen hundred (\$1500) dollars; in counties having a population of ten thousand persons and less than fifteen thousand persons, the sum of seventeen hundred (\$1700) dollars; in counties having a population of fifteen thousand persons and less than seventeen thousand five hundred persons, the sum of nineteen hundred (\$1900) dollars; in counties having a population of seventeen thousand five hundred persons and less than twenty thousand persons, the sum of twenty-one hundred (\$2100) dollars; in counties having a population of twenty thousand persons and less than twenty-five thousand persons, the sum of twenty-three hundred (\$2300) dollars; in counties having a population of twenty-five thousand persons and less than fifty thousand persons, the sum of twenty-five hundred (\$2500) dollars; in counties having a population of fifty thousand persons and less than seventy-five thousand persons, the sum of thirty-six hundred (\$3600) dollars; in counties having a population of seventy-five thousand persons and less than one hundred fifty thousand persons, the sum of four thousand (\$4000) dollars; in counties having a population of one hundred fifty thousand persons and less than four hundred thousand persons, the sum of five thousand (\$5000) dollars; Provided, that in any county wherein the clerk of the circuit court is ex officio

recorder of deeds, said offices shall be considered as one for the purpose of this section: Provided, it shall be the duty of the circuit clerk, who is ex officio recorder of deeds, to charge and collect for the county in all cases every fee accruing to his office as such recorder of deeds and to which he may be entitled under the provisions of section 13426 or any other statute, such clerk and ex officio recorder shall, at the end of each month, file with the county clerk a report of all fees charged and accruing to his office during such month, together with the names of persons paying such fees. It shall be the duty of such circuit clerk and ex officio recorder of deeds, upon the filing of said report, to forthwith pay over to the county treasurer, all moneys collected by him during the month and required to be shown in such monthly report as hereinabove provided, taking duplicate receipt therefor, one of which shall be filed with the county clerk, and every such circuit clerk and ex officio recorder of deeds shall be liable on his official bond for all fees collected and not accounted for by him, and paid into the county treasury as herein provided: Provided further, that the clerks of the circuit courts shall be allowed to retain in addition to the sums allowed in this section, all fees earned by him in cases of change of venue from other counties: Provided, further, that until the expiration of their present term of office, the persons holding the office of circuit clerk shall be paid the maximum amount as now provided by law, in the manner provided by this chapter."

(Underscoring ours.)

Inasmuch as this section is not divided into paragraphs, and your letter fails to indicate with particularity the language upon which the Circuit Clerk bases his contention, we are assuming that it is the last clause of the section, which we have underscored above.

Prior to the enactment of this law in 1937, by the Fifty-ninth General Assembly, the compensation of circuit clerks was governed by Section 11786 R. S. Mo. 1929 as re-enacted Laws of 1933, page 369, which reads as follows:

"The aggregate amount of fees that any clerk of the Circuit Court under Articles 2 and 3 of this Chapter shall be allowed to retain for any one year's service shall not in any case exceed the amount hereinafter set out. In counties having a population of less than 7,500 persons, the sum of \$1000.00; in counties having a population of 7,500 and less than 10,000 persons, the sum of \$1100.00; in counties having a population of 10,000 and less than 12,500 persons, the sum of \$1300.00; in counties having a population of 12,500 and less than 15,000 persons, the sum of \$1500.00; in counties having a population of 15,000 and less than 17,500 persons, the sum of \$1700.00; in counties having a population of 17,500 and less than 20,000 persons, the sum of \$1900.00; in counties having a population of 20,000 and less than 25,000 persons, the sum of \$2100.00; in counties having a population of 25,000 and less than 30,000 persons, the sum of \$2300.00; in counties having a population of 30,000 and less than 70,000 persons, the sum of \$2500.00; in counties having a population of 70,000 and less than 80,000 persons, the sum of \$3000.00; provided, that in any county wherein the clerk of the Circuit Court

is ex-officio recorder of deeds, said offices shall be considered as one for the purpose of this section; provided, further, that clerks of the Circuit Court shall be allowed to retain, in addition to the fees allowed under this section, all fees earned by them in cases of change of venue from other counties; provided, further, that, until the expiration of their present terms of office, the persons holding the offices of Circuit Clerks shall be paid in the same manner and to the same extent as now provided by law."

It will be noted that by the Laws of 1933 the Circuit Clerk was permitted to retain fees collected up to the maximum amount prescribed by statute; that the 1937 law, which is now Section 13408, R. S. Mo. 1939, abolished this method of payment and fixed a stipulated annual salary.

The clause of Section 13408, supra, had the effect of postponing the application of the amounts fixed in the section until the expiration of the respective terms of the circuit clerks who were in office at the time the law was enacted and authorizing the payment of the fixed salary for the same period. At the beginning of the next term of office following the enactment of Section 13408 it became applicable in all of its terms and provisions. The word "term" has reference to the period fixed by statute and in no wise refers to the individual who may happen to be the incumbent for more than one term. State ex rel. Emmons v. Farmer, 271 Mo. 306. The term of a circuit clerk is four years and until his successor is elected or appointed, and qualified.

The present Circuit Clerk and Recorder of Sullivan County, according to your letter, must have been elected in the year 1934 for a term of four years. That term ended when

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he was re-elected for the second term in the year 1938 and qualified for such second term, applied to the office of Circuit Clerk of Sullivan County. The clause of Section 13408, supra, which we are assuming is the one upon which the Circuit Clerk bases his contention, continued the rate of compensation which was in effect in the year 1937 to the end of the term at the close of the year 1938 and did in no way affect the salary for the term of office which commenced January 1, 1939.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney-General

WOJ:CP

APPROVED:

VANE C. THURLO
(Acting) Attorney-General